THE HIGH COURT OF UTTARANCHAL AT NAINITAL
A.O. No. 1182 of 2001
Old F.A.F.O.No. 16 of 2000

National Insurance Company Ltd.
Registered Officer-3 Middleton Street, Calcutta,
Through its Assistant Manager, D.Sarkar
Presently posted at Division Office
25, M.G.Marg, Allahabad.

… **Appellant-O.P.**

Versus

1. Smt. Katigi Devi W/O late Kunwar Singh,
2. Dinesh Singh, S/O late Kunwar Singh,
3. Umed Singh (minor),
4. Vinod Singh (minor) Both minor sons of late Kunwar Singh
   Both respondent nos. 3 and 4 through their mother and Natural guardian Smt. Katigi Devi.
5. Beera Devi W/O late Mohan Singh (mother),
   All respondent nos. 1 to 5 R/O village Patyun, Patwari Circle Bhiri, Tehsil Ukhimath, District Chamoli. (*Claimants)*
6. Jaspal Singh Negi S/O not known,
   R/o village Kaushalpur, Patwari Circle Chandrapur Tehsil Ukhimath, District Chamoli
   (owner of Truck No. UP 08/3179).
7. Satish Singh S/O Daulat Singh, R/O village Kyarak Barsudi, Patwari Circle Chandrapur, Tehsil Ukhimath, District Chamoli. (Driver of Truck No. UP 08/3179)

… Respondents

Sri D.S.Patni, Adv. learned counsel for the appellant.
None for the respondents.

Date April 05, 2006.

P.C. : Hon. B.S. Verma, J.

This appeal under Section 173 of the Motor Vehicles Act, 1988 (***for short the Act)*** is directed against the judgment and ward dated 06-10-1999, passed by the Motor accident Claims Tribunal/ District Judge Chamoli (***in short the Tribunal)*** in Motor Accident Claim Petition No. 10 of 1997, Smt. Katigi Devi and others Vs. Jaspal Singh Negi and others, whereby compensation of Rs. 94,500/-/- has been awarded in favour of the claimants along with interest @ 10% per annum from the date of claim petition till the date of payment as mentioned in the impugned order.

2. Brief facts of the case giving rise the present appeal are that Kunwar Singh, husband of the claimant no.1, a carpenter and agriculturist and earning Rs. 4,000/- per month lost his life in a motor vehicle accident on 1.4.1997 due to rash and negligent driving by the driver of Truck No. U.P. 08/3179 Tata- 608 at about 9 p.m. near Chenagaad Guptakashi Basukedar motor road. The deceased was aged about 47 years. Post Mortem of the dead body was conducted. The offending vehicle was owned by Jaspal Singh and it was duly insured with the National Insurance Company. The claimant are the legal heirs and dependents of the deceased. They have claimed compensation of Rs. 8,00000/-.

3. The O.P. No.1, owner of the truck, filed his written statement and contested the claim petition. He has admitted the motor accident involving Truck in question as well as ownership and insurance of the vehicle. It has been stated that the truck in question was going from Basukedar to Guptakashi and at the place of accident, the road was blocked by mob of the people. The driver tried to control the vehicle but failed, which resulted into the accident. The driver was not rash and negligent. The liability if any to pay compensation lay upon the Insurance Company. The O.P. No.2 driver of the vehicle also filed his written statement and has taken similar stand as that of the owner.

4. The Insurance Company also filed its written statement and contested the case. It has denied the allegations made in the claim petition and has asserted that the owner did not file any insurance and driving licence, therefore, the insurer was not liable to pay compensation.

5. Learned Tribunal framed following issues in the case:-

1. Whether the accident occurred due to negligence of the driver of truck involved in the accident?

2. Whether the deceased was earning Rs. 4,000-00 per month?

3. What relief to which the claimants are entitled and which party is liable to pay?

6. In support of the claim petition, the claimants have filed documentary as well as oral evidence. Copy of F.I.R. is paper no. 7-C and Post Mortem Report is paper no. 27-C. Claimants examined Smt. Katigi Devi as P.W.1 and Gajendra Singh as P.W.2. P.W.2 is the real brother of the deceased and he has given ocular account of the accident resulting in the death of Kunwar Singh. Owner has examined himself as D.W.1 and has filed photocopy of the technical report, photocopies of the insurance policy, registration certificate, fitness etc. The Insurance Company has admitted the genuineness of these papers. Insurance Company has filed certificate issued by the Licensing Authority of district Solan and has examined D.W.2 Man Singh, Junior Assistant Registration Office Solan.

7. After hearing both the parties and perusing the evidence on record, the learned Tribunal came to the conclusion that the motor accident resulting in the death of Kunwar Singh occurred due to sole negligence of the truck driver and held that the truck in question was owned by Jaspal Singh. The learned Tribunal has also given a categorical finding that the driver was having a valid driving license and the insurance has not discharged its burden that in any view of the matter it was within the knowledge of the owner that the driver Satish was not having valid driving license. Accordingly, the insurer was made liable to pay compensation. On the point of quantum of compensation, the Tribunal has held that for want of documentary evidence, the income of the deceased as stated by the claimants cannot be accepted. It was held that the deceased must have earned at least Rs. 1,200/- per month presuming that the deceased would have been a labourer and after deducting Rs.500/- towards personal expenses, the loss of income was

assessed Rs. 700/- per month, i.e. Rs. 8,400/- per annum. It was held that the deceased Kunwar Singh died in between the age of 42 and 45 year. Hence the learned Tribunal applied multiplier of 15 for computing the amount of compensation, which came to 8,400/- x 15 = 1,26,000/-. 1/4th of this amount was deducted towards lump sum payment and ultimately, the claim petition was decreed for a sum of Rs. 94,500/- against the insurance company along with interest @ 10% per annum.

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8. In this appeal, the validity of the driving license has been vehemently challenged on behalf of the Insurance Company. It has been submitted by the learned counsel for the appellant-insurance company that the Insurance Company has led evidence before the Tribunal to show that the driver of the truck was not having a valid driving license. The driving license held by the driver was issued by the Licensing Authority of Himachal Pradesh and the truck was being driven in district Chamoli.

9. I have heard learned counsel for the appellant and have perused the material of record including the impugned award.

10. So far as the validity of driving license of the truck driver on the date of accident is concerned, it is incumbent upon the Insurance Company to lead evidence to the effect that the owner/insured was guilty of negligence or failed to exercise reasonable care in that regard so as to absolve itself from the liability of payment of compensation. The point of validity of driving license was dealt with the learned Tribunal in the impugned judgment. The Insurance Company had challenged the driving license before the learned Tribunal and it has examined D.W.2 Man Singh. According to the Insurance Company the driver Satish was not having a valid driving license. In this case, owner of the vehicle Jaspal Singh has been examined has D.W.1, who has

specifically stated that before employing Satish as a driver, he had seen the original driving license possessed by him. The only ground of challenge raised by the Insurance Company is that the driver was not having a valid driving license on the date of accident. But this fact that the driver was not having a valid driving license in itself is not sufficient to absolve the insurer from its liability to pay compensation unless it is proved by the insurance company that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time. In the instant case, the appellant-insurance company has not led any evidence before the Tribunal to establish that the insured was negligent or he failed to exercise reasonable care in that regard. It has not been shown as to whether it was within the knowledge of the owner of the truck that the truck driver was not having a valid driving license at the relevant time. I am fortified in my view by the Apex Court judgment in the case of National Insurance Co. Ltd. V. Swaran Singh [(2004) 3 SCC 297]. In para 110(iii), the Apex Court has observed as under:-

"Mere absence, fake or invalid driving license or disqualification of the driver for driving at the relevant time are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."

11. Again, in a subsequent case ***"Punam Devi and another Vs. Divisional Manager, New India Assurance Co. Ltd. and others" [(2004) 3 Supreme Court Cases, 386],*** the Apex Court has observed that ***"Motor Accident-Insurance company neither***

pleading nor leading evidence that the offending driver had no license-Claims Tribunal awarding compensation-Held, quantum of compensation cannot be challenged and the only ground open to the Insurance Company is under S. 149(2), to show that the insured was negligent or that he failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicles- Since the Insurance Company failed to discharge this burden, High Court erred in allowing the appeal."

12. Having gone through the entire material on record particularly in view of the categorical statement of D.W.1 Jaspal Singh, the owner of the vehicle, I am fully convinced that the appellant-Insurance Company has miserably failed to discharge its burden on the point of breach of policy condition by the insured in accordance with the law laid down by the Apex Court in the aforesaid two judgments. The Insurance Company was required to prove the negligence on the part of the owner of the vehicle by cogent evidence, which is failed to do.

13. In the result, the appeal preferred by the Insurance Company is devoid of merit and deserves to be dismissed.

14. The appeal is hereby dismissed. The impugned award dated 6.10.1999 passed by the Motor Accident Claims Tribunal Chamoli is upheld. No order as to costs.

15. The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimants.

(B.S. Verma, J.)

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